

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIBA-GEIGY CORPORATION, and  
McGREGOR CHEMICAL CORPORATION,

Defendants.

Civil Action No.

W-83-CA-242

CONSENT DECREE

Plaintiff, United States of America, on behalf of the United States Navy, filed the complaint herein on December 9, 1983. This complaint alleges that the defendants CIBA-GEIGY Corporation and McGregor Chemical Corporation are liable pursuant to Section 107 of the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9607, for reimbursement of costs incurred and to be incurred by the United States in response to the release or threatened release of hazardous substances at Area G of the Naval Weapons Industrial Reserve Plant near McGregor, Texas, and for damages to natural resources. On or about February 6, 1984, defendants filed a counterclaim against the United States under Section 107 of CERCLA and/or for indemnity.

There has not been a trial on any issue of fact or law in this case. However, the parties wish to settle the dispute

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described above. Accordingly, they have agreed to the making and entry of this Consent Decree through their attorneys and authorized officials, prior to trial and without any admission of liability or fault by any party.

THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED:

Jurisdiction

1. This court has jurisdiction over the subject matter of the action pursuant to 28 U.S.C. §§1331, 1345, and 42 U.S.C. §9613(b) and has jurisdiction over the parties hereto.

Parties Bound

2. This Decree shall apply to and be binding upon the parties to this Decree and upon their officers, agents, employees, contractors, successors, and assigns. The Defendants shall provide a copy of this Consent Decree to each contractor and subcontractor retained to perform work contemplated herein.

Purposes and Objectives of this Consent Decree

3. It is the mutual purpose and objective of the parties, through this Consent Decree, to protect public health, welfare and the environment from releases and threatened releases of hazardous substances from the Area G Site through the design, construction and implementation by the Defendants at their own and sole expense of the response actions described herein, and to reimburse the United States for costs incurred by the United States prior to the date of this Consent Decree. This Consent Decree provides

the framework for response actions to be undertaken by defendants and for defendants' reimbursement of costs to the United States. The parties agree that settlement of these matters without further litigation is in the interest of the public and that the entry of this Consent Decree is the most appropriate means of resolving these matters.

#### Definitions

4a. "Site" shall mean that portion of Area G of the Naval Weapons Industrial Reserves Plant near McGregor, Texas which is an area approximately 100 feet by 800 feet and is described more particularly in Exhibit A to this Consent Decree.

b. "Performance Criteria" shall mean the goal of reducing contamination by hazardous substances, including pesticides, at or near the Site to levels no greater than one part per million (1 ppm) in soils and to no detectable level in groundwater.

c. "United States" shall mean the United States of America, its agencies and instrumentalities, including the United States Navy.

d. "Defendants" shall mean the CIBA-GEIGY Corporation, McGregor Chemical Corporation and the officers, agents, employees, contractors, successors and assigns of each.

#### Initial Response Action

5. Consistent with the objectives of this Consent Decree, the Defendants shall prepare a Response Work Plan for the Site,

including specifications and designs for all activities contemplated by the Consent Decree, which Plan shall be delivered to the United States and the Court, together with all background data, analyses and other supporting information within twenty (20) days following the entry of this Consent Decree by the Court. The Response Work Plan shall include an Initial Response Action and Initial Testing Program, and a specific timetable for expeditious completion of each remedial task, including a final completion date for all such remedial activities and shall also include a detailed schedule for all activities to be carried out under the Consent Decree.

6. The Response Work Plan shall provide that the Initial Response Action shall be the excavation and removal of visible pesticides and visibly contaminated soils from the Site within twenty (20) days of approval of the Response Work Plan. The material to be excavated and removed in the Initial Response Action shall include the materials described in Exhibit B to this Consent Decree and all visible hazardous substances, including visible pesticides and contaminated soils, and at least two (2) feet of soil in all directions on the surface from, and at least six (6) inches below the visible pesticides and visibly contaminated soils. These materials are to be disposed of by defendants in conformance with all applicable federal, state and local requirements and in a manner that poses no threat to human health, welfare or the environment.

7. The Response Work Plan shall provide that within twenty (20) days after completion of the Initial Response Action, defendants will undertake, complete and report to the United States an Initial Testing Program of sampling and analysis of soils and groundwater at the Site to determine the extent and nature of any remaining hazardous substances, including pesticides. The Initial Testing Program shall include specifications for location, design, installation and operation of sampling activities, and procedures for sampling, handling and testing samples.

8. The United States shall have twenty (20) calendar days from the date upon which the Response Work Plan is delivered to it to approve or object to the Response Work Plan. Should the United States object to the Response Work Plan, or portion thereof, the procedures set forth in Paragraph 20 shall apply. As finally approved by United States or after hearing and determination by the Court, the Response Work Plan shall be incorporated by reference in the Consent Decree. Defendants shall implement the Response Work Plan.

Secondary Response Action

9. If the actions taken under the Response Work Plan fail to achieve the Performance Criteria, then within twenty (20) days of the completion of the Initial Testing Program, defendants shall propose to the United States Secondary Response Action designed to achieve the Performance Criteria. The proposal shall include specifications and designs for the actions and specific timetables for implementation and completion

of such actions. The proposal shall not include a plan for leaving the hazardous substances, including pesticides, on United States property protected by any form of cap or cover. The proposal shall include a Secondary Testing Program of sampling and analysis of soils and groundwater of the Site to determine the nature and extent of any remaining hazardous substances, including pesticides.

10. Within twenty (20) days of receipt of the proposed Secondary Response Action, the United States shall approve or object to the proposal. Should the United States object to the proposal, or portion thereof, the procedures set forth in paragraph 20 of this Consent Decree shall apply.

11. Defendants shall commence the Secondary Response Action upon approval by the United States or determination by the court of the Secondary Response Action and shall fully implement it. Within twenty (20) days of completion of the Secondary Response Action, defendants shall undertake, complete and report to the United States the results of the Secondary Testing Program.

#### Supplemental Action

12. If the Secondary Testing Program fails to demonstrate that the Performance Criteria have been met, Defendants shall within twenty (20) days of completion of the Secondary Sampling Program propose to the United States supplemental action designed to achieve the Performance Criteria and a supplemental testing program designed to determine the nature and extent of any remaining

hazardous substances, including pesticides. Within twenty (20) days of receipt of the proposal, the United States shall approve, modify or disapprove the proposal. In the event the United States approves the proposal, defendants shall implement it. In the event the parties are unable to resolve any disagreements on the proposal within twenty (20) days after the United States' action on the proposal, the United States may proceed to undertake such response actions as it determines are appropriate to respond to the conditions at the site and to apply to the court for reimbursement from defendants of all response costs incurred by the United States after the date of this Consent Decree.

#### Variances

13. No variance shall occur in implementation of any work plan proposed pursuant to this Consent Decree except by stipulation by the parties. In initiating such a stipulation, the moving party shall notify the other parties of the nature of and reason for any such requested variance. In the event of a dispute concerning such written approval, the dispute shall be submitted to the Court in accordance with the provisions of Paragraph 20.

#### Reimbursement of Prior Response Costs

14. On or before the thirtieth day following entry of this Consent Decree, the Defendants shall deliver to the United States Department of Justice, Land and Natural Resources Division, Environmental Enforcement Section, a certified check in the amount of \$20,000 dollars, payable to "Treasurer of the United States" as consideration for compromise by the United States

of its claim for all costs incurred by it prior to the date of the Consent Decree in response to conditions at the Site.

Relationship of this Consent Decree to Other Laws

15. Design, construction and implementation of the remedial activities described above shall be in compliance with all applicable federal, state and local requirements.

Delay in Performance

16. If any event occurs which causes delay in the timely achievement of the requirements of this Consent Decree, the Defendants shall notify the United States immediately in writing of the delay or anticipated delay as appropriate, describing in detail the anticipated length of the delay, the cause or causes of delay, the measures taken and to be taken by the Defendants to prevent or minimize the delay, and the timetable by which these measures will be implemented.

Stipulated Penalties

17. The Defendants shall pay the following stipulated penalties for any failure to comply with time requirements established pursuant to this Decree:

<u>Period of Failure to Comply</u>	<u>Penalty Per Day</u>
1st - 30th day	\$ 500.00
Beyond 30th day	\$1,000.00

Stipulated penalties under this Paragraph shall be paid by certified check made payable to the Treasurer of the United States and shall be submitted to the United States Department of Justice,



Land and Natural Resources Division, Environmental Enforcement Section, within twenty (20) days after written request by the United States. The stipulated penalties set forth above shall be in addition to any other remedies or sanctions which may be available to the United States or its agencies by reason of the Defendants' failure to comply with the requirements of this Consent Decree.

#### Designation of Coordinators

18. Within fifteen (15) days of Court approval of this Consent Decree, the Defendants shall designate a coordinator who shall be responsible for administration of reports and actions called for by this Consent Decree, and shall submit the coordinator's name and address to United States. The United States shall within the same time frame designate a coordinator for administration of the United States' responsibilities and receipt of all written matter required by this Consent Decree and shall submit the coordinator's name and address to the Defendants.

#### Suspension of Activities

19. In the event the United States determines that activities implementing this Consent Decree create or threaten an imminent and substantial endangerment to the human health, welfare or the environment, the United States shall have authority to order the Defendants to stop further implementation of this Consent Decree for such period of time as needed to abate the threat or endangerment, provided that during this

period of time the Defendants' obligations pursuant to this Consent Decree shall be suspended and the time schedule for implementation shall be extended by stipulation of the parties by the time period of the delay.

#### Dispute Resolution

20. In the event a dispute should arise between the parties regarding any action, plan, or proposal under this Consent Decree, or the approval thereof, or the effect, intent, or implementation of this Consent Decree, the parties shall attempt to resolve such dispute. If the parties within the time period specified by this Consent Decree, or thirty (30) days where none is specified, are unable to reach agreement on any such dispute, any party may petition this Court for a decision as to the matter in dispute. Such a petition shall set forth with particularity the details of the dispute, the efforts made by the parties to resolve it and the schedule, if any, within which it must be resolved to assure orderly implementation of this Consent Decree. As to matters for which United States exercises its approval authority under this Consent Decree, the Defendants shall have the burden of persuasion that United States' actions are arbitrary and capricious. In all other matters of disputed fact, the Defendants shall have the burden of persuasion by a preponderance of the evidence.

#### Modification

21. Any modification of this Consent Decree, including Appendices and plans hereunder, must be in writing and approved by the Court.

Liability of United States

22. The United States, its employees, agents and contractors shall not be liable for any injuries or damages to persons or property resulting from acts or omissions of the Defendants, their employees, agents or contractors in carrying out activities pursuant to this Consent Decree, nor shall the United States be held out as a party to any contract entered into by the Defendants, their employees, agents or contractors in carrying out activities pursuant to this Consent Decree.

Access to Information

23. The Defendants shall provide the United States, upon request, with all information within their possession and/or knowledge or that of their contractors or agents relative to the Defendants' activities concerning the Site or its implementation of this Consent Decree.

Effect of this Consent Decree on Other Laws  
and upon Third Parties

24. The parties specifically acknowledge and agree that, from and after the effective date of this Consent Decree, compliance with the provisions hereof shall in no way be deemed compliance with or relieve the Defendants of any requirements under other applicable provisions of law.

25. It is intended that this Consent Decree shall neither create nor affect the rights of persons or entities who are not parties to this Consent Decree.

Claims Against Hazardous Substance Response Fund

26. The Defendants agree to waive all claims against the United States, its agencies and instrumentalities, and the Hazardous Substance Response Fund established pursuant to CERCLA, arising out of any actions taken or to be taken at NWIRP McGregor.

Future Remedial Action

27. The United States reserves the right to seek additional relief, including monetary and injunctive relief, which may be necessary to prevent or mitigate contamination at the Site in the event that an imminent and substantial endangerment to human health, welfare, or the environment is or may be presented by conditions at or releases from the Site. In the event that the United States determines that such an imminent and substantial endangerment exists, Defendants shall submit to the United States' coordinator for approval a response plan, describing in detail the remedial actions that are necessary to protect public health, welfare, and the environment, and a schedule according to which the remedial actions shall be implemented. Once the United States has approved the response plan, a stipulation shall be presented to the Court. The Defendants shall implement the plan according to the approved schedule. If the United States and Defendants cannot agree on the need for or the extent of appropriate remedial action, or the schedule according to which it shall be implemented,

the United States may submit the matter to the Court pursuant to Paragraph 20 of this Decree, undertake a remedy itself and later seek cost recovery, or both.

Public Comment

28. The parties agree and acknowledge that final approval and entry of this proposed Consent Decree is subject to the requirements of 28 C.F.R. §50.7.

Retention of Jurisdiction

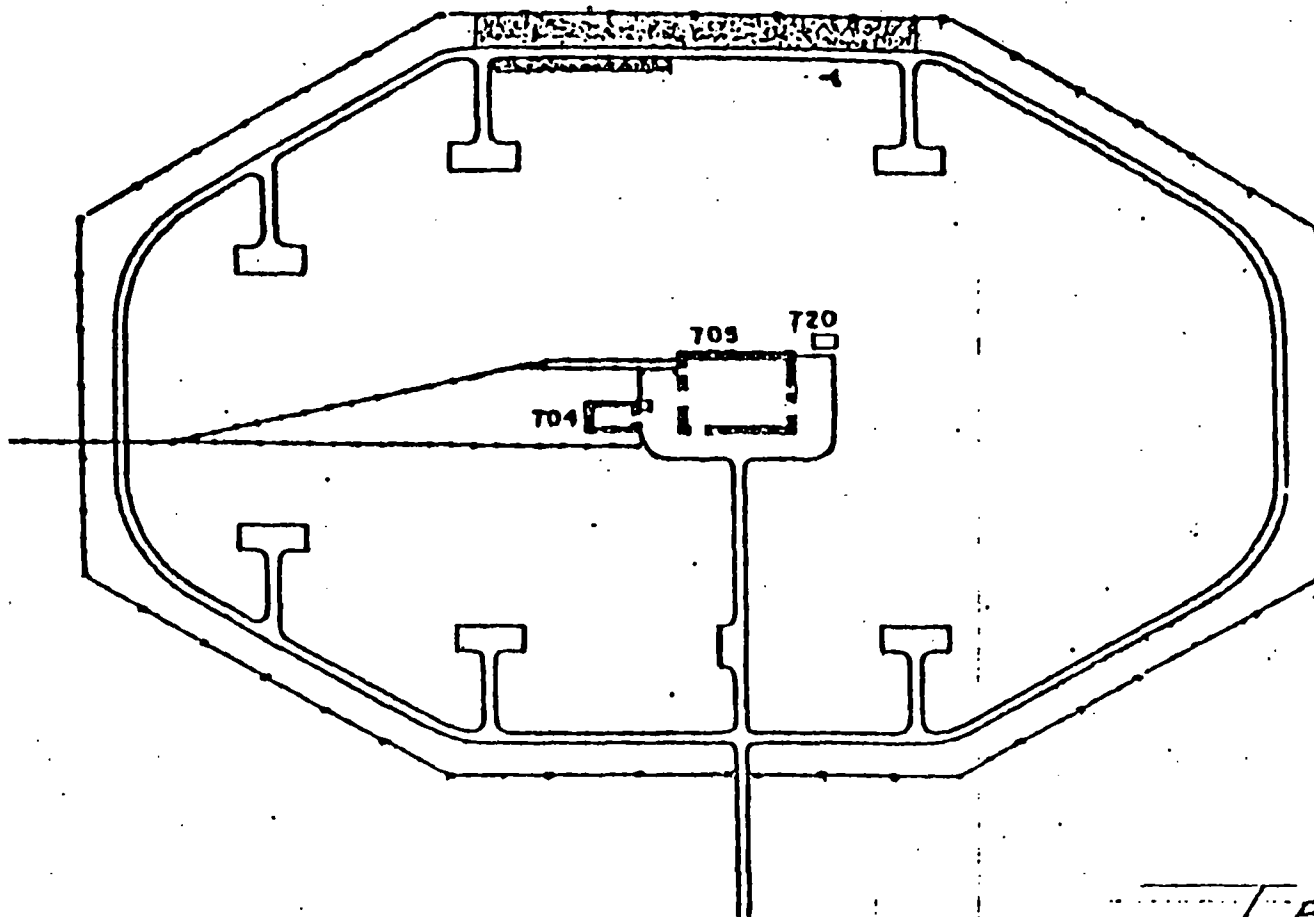
29. Jurisdiction by this Court is retained for the purpose of enabling any of the parties to this Consent Decree to apply to the Court at any time for such further order, direction and relief as may be necessary or appropriate for the construction or modification of this Consent Decree or to effectuate, or enforce compliance with its terms, and to resolve disputes in accordance with Paragraph 20 hereto.

Effective Date

30. The effective date of this Consent Decree shall be deemed to be the date upon which this Consent Decree is executed by the Court and filed with the Clerk of the District Court for the Western District of Texas.

Representation of Authority

31. Each undersigned representative of the parties to this Consent Decree certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute it and legally bind such party to this Consent Decree.



**LEGEND**  
 PESTICIDE CONTAMINATED  
 EARTH

SCALE OF FEET  
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TOOLING & EQUIPMENT STORAGE

